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10/750,505

12/31/2003

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EXAMINER

TAWFIK, SAMEH

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/750,505
Filing Date: December 31, 2003
Appellant(s): NELSON ET AL.

Randall W. Fieldhack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/21/2008 appealing from the Office action mailed 03/12/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

JB. 10-095481

Kao

04/1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

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Claims 1-8, 10-19, 21, 22, 35-39, 41-46, and 48 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Kao (JP 10-095,481).

Kao discloses a method of folding a disposable absorbent article (Fig. 2), the article having an initial upper surface, an initial lower surface, a longitudinal centerline, a transverse centerline, opposing first longitudinal side edges opposing first transverse end edges and an unfolded configuration (Figs. 1 and 7), the method of folding comprising forming one fold extending in a transverse direction (Figs. 6 and 7) by bringing a portion of the initial upper surface into a facing relationship with another portion of the initial upper surface, the one fold being spaced between opposing first transverse end edges (Figs. 6 and 7), the resulting partially-folded article having an intermediate first surface, an intermediate second surface and opposing second transverse end edges, and thereafter forming a number, greater than one, of transversely extending folds in an accordion-like manner (Fig. 6), the transversely extending accordion-like folds being spaced between opposing second transverse end edges (Fig. 6), and thereby forming a folded article having a folded configuration area and an unfolded configuration area (Figs. 5-7).

Kao does not disclose that a ratio between the folded configuration area and an unfolded configuration area of no more than 0.14, 0.08, and/or no more than 0.04. However, Kao discloses unfolded and folded article as shown in Figs. 5-7 and a ration between a folded configuration and the unfolded configuration via thickness of no more than 0.15, see for example the English translation of Kao; paragraph 0019 “If the thickness ratio becomes less than 15%, the diaper becomes hard and the texture worsens.”; *note that in t he filed specification of the invention; ;age 11, lines 20-22, applicants point out to the ratio of being “0.15; alternatively, no more than 0.14;” which is obvious that the exact ratio is not that critical and could be 0.15.*

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Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Kao's method by having the ratio to be no more than 0.14, 0.08, and/or 0.04 between the folded and unfolded area as seen in Figs. 5-7, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Regarding claims 2 and 13: wherein the number of accordion-like transverse extending folds is an even number (Fig. 6).

Regarding claims 3, 14, and 26: wherein the number of accordion-like transverse extending folds is 2 (Fig. 6).

Regarding claims 4, 15, and 27: wherein the one fold extending in a transverse direction is located substantially adjacent the transverse centerline (Fig. 6).

Regarding claims 5, 16, and 28: wherein the accordion-like transverse extending folds are spaced substantially equally between opposing second transverse end edges (Fig. 6).

Regarding claims 7, 11, 18, and 22: the folded article is an infant diaper (Figs. 5-7).

Regarding claims 8 and 17: wherein the accordion-like transversely extending folds are spaced substantially equally between opposing second transverse end edges (Fig. 6).

Regarding claim 12: Kao discloses the step of forming at least one longitudinally extending fold in each side margin by folding each first longitudinal side edge inward toward the initial upper surface and thus bringing a portion of the initial upper surface into facing relationship with another portion of the initial upper surface (Fig. 5; via longitudinal folds).

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Regarding claims 36 and 43: the number of transversely extending accordion-like folds is an odd number (Fig. 6).

Regarding claim 37: Kao does not disclose that the accordion-like folds are odd number greater than 4. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Kao's accordion-like folds to be more than 4 folds, in order to reduce the packaging space length wise, since it has been held that mere duplication of the essential parts involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Alternatively, it would have been an obvious matter of engineering design choice to have modified Kao's accordion-like folds to be more than 4 folds, in order to reduce the packaging space, since applicant has not disclosed that 5 folds solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with Kao's folds as shown in Fig. 6.

Regarding claims 39 and 46: Kao discloses that the transversely extending accordion-like folds are spaced substantially equally between opposing first transverse end edges, see for example (Fig. 6).

Regarding claims 41 and 48: Kao discloses that the folded article is an infant diaper (Figs. 2, 5, 6, and 7).

(10) Response to Argument

A. Examiner interpretation of the independent claims

During patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d

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1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP 2111.01.

Independent claims 1, 12, 35, and 42:

A method of folding a disposable absorbent article with “a folded configuration area and an unfolded configuration area wherein the folded article has a ratio between the folded configuration area and the unfolded configuration area of no more than 0.14.”

The claims recites a method of folding a disposable absorbent article, which in the broadest reasonable interpretation, could be folded, compressed, and/or both to come up with the claimed “folded configuration area”, as the claims did not give specific descriptions to the configuration areas.

B. The rejection of claims 1, 12, 35, and 42 under 35 U.S.C. 103(a) is proper and should be affirmed.

Appellants argue in pages 6 and 7, that the applied art of Kao teaches that compression to less than a 0.15 ratio produces undesirable and unworkable results. No anticipation, teaching, or suggestion by Kao to achieve the claimed invention.

In this instance, there are three major issues support the examiner's position:

1. The claimed invention is written in a very broad way, as the claimed "configuration area" of the folded and unfolded articles are not specific. Therefore, a reference showing folds, compression, and/or both done to an article, should be considered over the claimed language.

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Note, the reference of Kao is disclosing the steps of folding, compressing, and/or performing both (fold and compression) to an article to reduce the size of the article and come up with a “folded configuration area” smaller than the “unfolded configuration area”.

2. The examiner agrees that Kao is silent about the claimed ration between the unfolded to the folded configuration areas to be no more than 0.14. However, it is very clear to those skilled in the art that Kao’s article is capable of being folded to come up with the ratio of the folded article to be 0.14 in respect to the unfolded size, to come up with the smallest possible size of the folded article.

Note Kao might be referring to an undesirable thickness ratio to the article to be less than a 0.15, but does not specify the ratio of the folds. There is a difference between the ratio of thickness and the ratio of folds, which seem as causing confusion to appellants.

3. It seems that the exact ratio between the unfolded and folded configuration areas is not that critical issue to the specified invention. See for example the filed specification, page 11, lines 15-34; appellants are referring to many different ratios, which seemed not that critical as long as resulting on coming up with the smallest possible folded article.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Sameh H. Tawfik/
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Art Unit: 3721

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